

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL 2327
THIS DOCUMENT RELATES TO: WAVE 3 CASES	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

**DEFENDANTS’ REPLY IN SUPPORT OF MOTION TO EXCLUDE
THE OPINIONS AND TESTIMONY OF DR. JIMMY W. MAYS, PH.D.**

Defendants Ethicon, Inc. and Johnson & Johnson (collectively, “Ethicon”) submit this Reply in Support of their Motion to Exclude the Testimony and Opinions of Dr. Jimmy W. Mays, Ph.D. [Doc. 2843 (“Mot.”)] and Memoranda in Support [Doc. 2848 (“Defs.’ Mem.”)] (collectively, “Motion”). Plaintiffs’ Response to the Motion [Doc. 2891] (“Response”) is essentially a copy of Plaintiffs’ Wave 1 Response [Doc. 2144].¹ Ethicon hereby adopts and incorporates by reference its Wave 1 Reply in Support of its Motion to Exclude the Testimony and Opinions of Jimmy Mays, Ph.D. [Doc. [2209]. In addition, Ethicon submits the following in reply:

In its Motion, Ethicon explained that Plaintiffs’ materials science experts—including Dr. Mays—have admitted under oath that Prolene is chemically distinct from other forms of polypropylene, including commercially available formulations. *See* Mem. at 2-6 (quoting testimony by Dr. Mays, as well as Plaintiffs other materials science experts, Dr. Scott Guelcher

¹ The only difference is that Plaintiffs now cite the Court’s Wave 1 Order regarding Dr. Mays rather than the Court’s previous decisions in *Lewis* and *Cisson* decisions. *See* Resp. at 2-3.

and Dr. Duane Priddy). Specifically, Ethicon showed that Plaintiffs' materials scientists agreed that the singularity of Prolene is due to its unique additive package, including a proprietary blend of antioxidants that retard oxidation *in vivo*. *See id.* On this basis, Ethicon argued that Dr. Mays's reliance on studies that do not involve Prolene renders his opinions about Prolene unreliable. *See id.* at 7-12.²

Notably, Plaintiffs have not disputed the concessions made by their experts, including Dr. Mays. *See generally* Resp.; *see also* Pls.' Wave 1 Resp. [Doc. 2144].

Ethicon is aware of this Court's prior rulings that Ethicon's position is "wholly conceived by lawyers, [and] unfounded in science." Mem. Op. and Order (*Daubert* Motion re: Jimmy Mays, Ph.D.), at 6 [Doc. 2646] (quoting *Huskey v. Ethicon, Inc.*, 29 F. Supp. 3d 691, 703 (S.D. W. Va. 2014)). Ethicon respectfully submits, however, that a proposition to which Plaintiffs' materials science experts have agreed cannot be solely the product of Ethicon's attorneys' imaginations or divorced from the principles of science.

CONCLUSION

For all of these reasons, as well as those set forth in Ethicon's Motion, Ethicon respectfully requests that the Court grant its Motion to Exclude the Testimony of Dr. Jimmy Mays.

² Although Dr. Mays also points to certain internal Ethicon documents to support his opinions, Ethicon explained in its Motion that tests on which Dr. Mays relies simply do not support his opinion that the Prolene used in Ethicon mesh products is subject to scientifically significant oxidation or degradation in the human body. *See* Mem. at 12-13.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to CM/ECF participants registered to receive service in this MDL.

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